



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

The Bureau of Indian Affairs Jeopardized Land Buy-Back Program Accomplishments by Delegating Land Title Authority



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Memorandum

To: Jennifer Van Der Heide Escobar
Chief of Staff

From: Mark Lee Greenblatt
Inspector General

Subject: Final Evaluation Report – *The Bureau of Indian Affairs Jeopardized Land Buy-Back Program Accomplishments by Delegating Land Title Authority*
Report No. 2019-WR-024

This memorandum transmits our final evaluation report on whether the Bureau of Indian Affairs' delegation of land title authority was executed in accordance with Federal regulations. We make three recommendations to help the U.S. Department of the Interior's leadership ensure the Land Buy-Back Program's land acquisitions are legally defensible and to minimize risks that the Department will face liability. We communicated our findings to the Department throughout the course of our evaluation, and the Department took actions to implement two of our recommendations before issuance of our draft report. Based on the Department's response to our draft report, we consider Recommendations 1 and 2 resolved and implemented and Recommendation 3 resolved but not implemented. We will refer Recommendation 3 to the Assistant Secretary for Policy, Management and Budget to track implementation.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

If you have any questions regarding this memorandum or the subject report, please contact me at 202-208-5745.

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Results in Brief

We evaluated the U.S. Department of the Interior's Land Buy-Back Program for Tribal Nations. We found that the Bureau of Indian Affairs' 2013 and 2016 delegations of land title authority to its Acquisition Center violated Federal regulations. The delegation of land title authority resulted in confusion about roles and responsibilities, allegations of title document errors, breakdown in communication between offices, and the potential for litigation. In addition, the improper delegation of land title authority could result in claims that the Department breached its fiduciary trust responsibilities by mismanaging Cobell settlement funds and could potentially place all program actions at risk of being invalidated.

The Code of Federal Regulations (25 C.F.R. § 150) gives the Bureau's Land Titles and Records Offices land title authority by authorizing them to record, maintain, and certify title documents. In 2013, the Bureau delegated this authority to its Acquisition Center to accept and approve title documents transferring fractionated land interests to the tribes for the program. In 2015, the Bureau updated its delegations of authority policy, stating the authority to record and certify land title will be delegated only to the Land Titles and Records Offices. In 2016, however, the Bureau issued a policy that authorized the Acquisition Center to also record and certify title documents. The Bureau wanted to remove the limitation on land title authority in the 2015 policy, but the Office of the Solicitor opined that such an update would "not fix the indisputable authority delegated to the LTROs [Land Titles and Records Offices] by 25 C.F.R. § 150," which has the force of law, and the *Departmental Manual* and *Indian Affairs Manual* may not adopt policy that conflicts with law or regulation.

The Bureau Director explained that the Bureau delegated land title authority to the Acquisition Center because it did not believe the Land Titles and Records Offices had the resources to handle the additional workload. The Bureau's response to the November 2018 Office of the Solicitor opinion further explains that the Bureau delegated land title authority based on its interpretation of existing laws and regulations and that the streamlined and automated land acquisition process was necessary to make land acquisitions on an unprecedented scale possible. Another consideration was the fact that the Land Buy-Back Program was funded for only 10 years, meaning any funds remaining at the end of the 10 years would return to the U.S. Treasury.

We make three recommendations to help the Department's leadership ensure that program land acquisitions are legally defensible and to minimize risks that the Department will face liability. The Department responded to our draft report on September 10, 2020, and based on the response, we consider Recommendations 1 and 2 resolved and implemented and Recommendation 3 resolved but not implemented. Throughout the course of our review, we communicated our findings to the Department, and the Department took corrective actions to implement two of our recommendations before issuance of our draft report. We will refer Recommendation 3 to the Assistant Secretary for Policy, Management and Budget to track implementation.

Introduction

Objective

Our objective was to determine whether the Bureau of Indian Affairs' delegation of land title authority to its Acquisition Center was executed in accordance with Federal regulations.

See Appendix 1 for the scope and methodology of our evaluation.

Background

The General Allotment Act of 1887 divided tribal lands into parcels and allotted them to individual American Indians. Over time, successive generations inherited smaller and smaller undivided land interests, leading to increased land fractionation. Some of the original allotments have been owned by hundreds and, in some cases, thousands of heirs. Land fractionation has two primary negative impacts: (1) it limits the tribes' productive use of the land, and (2) it is costly to the Federal Government to administer and maintain land ownership records.

As a result of a 13-year class action lawsuit in which plaintiffs contended that the United States breached its trust duties to Indian beneficiaries regarding the management of Indian trust assets, including the failure to correct title record errors (*Cobell v. Salazar*), the Claims Resolution Act of 2010 (Cobell settlement) was approved by the U.S. Congress on November 30, 2010, and signed into law on December 8, 2010. The \$3.4 billion settlement included a \$1.9 billion Trust Land Consolidation Fund, to be expended by November 24, 2022, for the consolidation of fractional land interests through voluntary land acquisitions. Titles for land interests acquired with the fund are transferred into trust for tribes.

The authority to transfer land titles, given to the U.S. Department of the Interior by the U.S. Congress, is referred to as "land title authority" throughout this report. The Code of Federal Regulations (25 C.F.R. § 150) delegates land title authority to the Bureau's Land Titles and Records Offices by authorizing them to record, maintain, and certify title documents.

Prior to the settlement, the Department's land consolidation efforts were led by the Bureau's Indian Land Consolidation Center.

In 2010, we evaluated the Bureau's Indian Land Consolidation Center's implementation of the settlement and found a need for improved communication and coordination among the offices involved in Indian land consolidation (Report No. WR-EV-BIA-0002-2010, [*Coordination of Efforts to Address Indian Land Fractionation*](#)). During our evaluation, we received a hotline complaint alleging that the Indian Land Consolidation Center was automating the land acquisition process and that title document errors resulted from the automated acquisition process. The automated acquisition process allowed the Indian Land Consolidation Center to transfer title without involving the Land Titles and Records Offices. The title offices' functions are distinct from other steps in the acquisition process, such as acceptance and approval of acquisitions, which are typically performed by the Bureau's Division of Real Estate Services, or

in this case, the Indian Land Consolidation Center. A key element of internal control is separation of duties, whereby no single individual or office has the authority to complete all steps in authorizing, processing, and reviewing an entire transaction. To address concerns about the automated acquisition process, we recommended that the Bureau review its policy allowing the Indian Land Consolidation Center to automatically transfer titles to ensure that quality controls would not be compromised. In the same report, we pointed out the benefits of good communication and internal controls and encouraged each office to ensure separation of duties was maintained. In March 2012, the Deputy Secretary responded to our recommendation stating that title transfers would continue to be the responsibility of the title offices and not the Indian Land Consolidation Center.

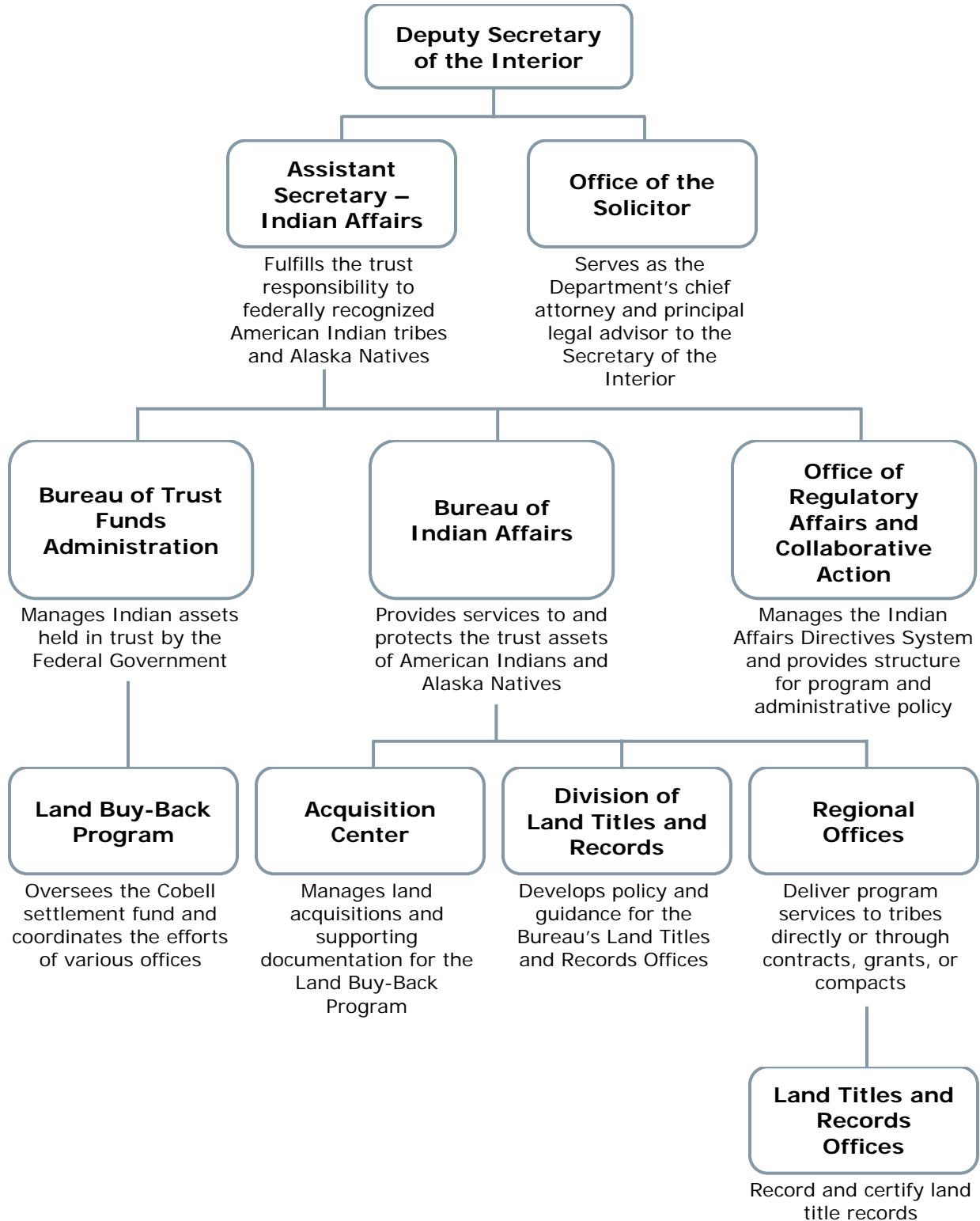
On December 17, 2012, the Secretary of the Interior issued Secretarial Order No. 3325, which established the Department's Land Buy-Back Program for Tribal Nations to ensure implementation of all land consolidation aspects of the Cobell settlement. The Indian Land Consolidation Center stopped acquiring fractional interests in October 2013.

The Land Buy-Back Program consists of a program director and staff who oversee the settlement fund and coordinate the efforts of the various offices involved in Indian land consolidation. Other offices involved include the Land Titles and Records Offices, which report to Bureau regional directors, or in the case of tribes that have contracted land title functions from the Bureau, to tribal officials. The Bureau also has a Division of Land Titles and Records that develops and issues policy and guidance for the title offices. Finally, the Bureau established an Acquisition Center in 2013 with primary responsibility for planning and executing land acquisition and title-related functions for the program. The Acquisition Center consists of a headquarters office in the Rocky Mountain Region and an operations center in the Great Plains Region.

To streamline its processes and procedures for the program, the Bureau developed a module in its Trust Asset and Accounting Management System (TAAMS) to fully automate all steps in the land acquisition process: accept, approve, record, certify, and transfer title. In 2018, we received another hotline complaint alleging that the Acquisition Center did not have the authority to automatically record and certify land title documents and that there were quality-control issues with the automated land acquisition process that resulted in critical title document errors and defects. That complaint prompted our current evaluation.

In October 2020, after we had completed our fieldwork and provided a draft of this report to the Department, the Department reorganized Indian Country programs under the Assistant Secretary – Indian Affairs. This process began in fiscal year 2019. The reorganization ultimately included moving the core functions of the Office of the Special Trustee to the newly created Bureau of Trust Funds Administration. The Land Buy-Back Program was then moved from the Office of the Secretary to the Bureau of Trust Funds Administration to align it into the Indian Affairs structure. See Figure 1 for an overview of the Department and Bureau offices involved in the program.

Figure 1: The Department and Bureau Offices Involved in the Land Buy-Back Program as of October 2020



Finding

The Bureau Violated Federal Regulations by Delegating Land Title Authority to Its Acquisition Center

We found that the Bureau violated Federal regulations by delegating land title authority to its Acquisition Center. Federal regulations (25 C.F.R. § 150) delegate land title authority to the Bureau's Land Titles and Records Offices by authorizing them to record, maintain, and certify title documents.

In 2017 and 2018, the Office of the Solicitor opined that the Acquisition Center was not authorized to perform land title functions because of the existing delegation of land title authority to the Bureau's title offices. Bureau officials stated that they disagreed with the Office of the Solicitor's legal opinions and delegated land title authority to the Acquisition Center because they believed the title offices did not have the resources to handle the additional workload and the Land Buy-Back Program was funded for only 10 years, meaning that any funds remaining at the end of the 10 years would return to the U.S. Treasury. In addition, the Bureau believed that existing laws and regulations allowed it to delegate land title authority.

An Office of the Solicitor memorandum stated the reasons that the Bureau gave for delegating land title authority to the Acquisition Center are irrelevant. We agree with the Office of the Solicitor that the laws and regulations that Bureau officials cited do not allow them to set aside 25 C.F.R. § 150.

Because the Bureau improperly delegated land title authority, the Department could be exposed to possible litigation that, depending on the outcome, could invalidate the Acquisition Center's land acquisitions and transfer of land interests to tribes. This could jeopardize the Land Buy-Back Program's accomplishments. The violation of Federal regulations also could result in claims that the Department breached its fiduciary trust responsibilities to American Indians and tribes by mismanaging the Cobell settlement funds.

In addition to potentially increasing the Department's exposure to litigation, the improper delegation of land title authority created confusion and conflicts over the roles, responsibilities, and performance of the land title functions between the Acquisition Center and the Land Titles and Records Offices. It also led to a breakdown in communication between offices involved in the Land Buy-Back Program, with officials reporting that they were not properly trained on the automated acquisition process, were not given the opportunity to comment on updated policies affecting their office, and were not provided copies of memoranda until months after first issuance. Finally, the delegation of land title authority to the Acquisition Center led to allegations that the land acquisitions it completed contained defects and were missing key documents.

By early 2017, Bureau officials were made aware of missing documents and title defects, prompting the Office of the Solicitor to issue an opinion on the required documents for valid land title transfer. To address these allegations, the Department directed a team, led by the Office of the Special Trustee, to review program acquisitions in 2019, which found that about 42 percent

of acquisitions were missing a key document. In anticipation of the costs that may be required to correct title defects, the Department put a hold on \$25 million from the Trust Land Consolidation Fund. The Office of the Solicitor examined the results of the 2019 review and prepared a memorandum that presented four options the Bureau could use to correct the land title defect issue. This memorandum also highlighted the risk of litigation this issue presents for the Department.

The sequence of events below describes how these issues began:

- 2013: The Bureau delegates land title authority to the Acquisition Center.
- 2014 – 2017: The Bureau updates delegation of land title authority and obtains advice from the Office of the Solicitor.
- 2016 – 2017: The Land Titles and Records Offices raise concerns to the Division of Land Titles and Records about land title document defects and scanning errors.
- 2018 – 2019: The Acquisition Center and Office of the Solicitor disagree over the legality of delegated land title authorities.
- 2019 – 2020: The Department directs a review of Land Buy-Back Program title documents.

The offices involved in the Land Buy-Back Program have been working to address the land title authority and title document defect issues. On February 24, 2020, and May 22, 2020, the Bureau, issued two revised policies (which were reviewed by the Office of the Solicitor) regarding the delegation of land title authority issues. An Office of the Solicitor official told us that these policy changes resolved the issues and stated that no further policy changes were needed. On June 3, 2020, the Assistant Secretary – Indian Affairs signed a corrective action plan regarding the missing land title document identified by the 2019 document review project.

2013: The Bureau Delegates Land Title Authority to the Acquisition Center

In 2013, the Bureau issued a new policy in the *Indian Affairs Manual* (3 IAM 11) that delegated land title authority to the Acquisition Center by authorizing it to accept and approve title documents transferring fractionated land interests to the tribes for the Land Buy-Back Program. The policy stated that, once accepted and approved, the title documents would be automatically recorded in TAAMS “without further consideration or action.” This policy update was a departure from the Deputy Secretary’s statement in 2012 that title transfers would continue to be the responsibility of the Land Titles and Records Offices. The Bureau Director stated that land title authority was delegated to the Acquisition Center because officials believed that the title offices did not have the resources to handle the additional workload and that the program was funded for only 10 years.

To streamline the land acquisition process, the Bureau designed and implemented a new module in TAAMS to automate the process. The automated acquisition process was intended to better

maintain and track land title documents and improve productivity through easily accessible data and processes. Acquisition Center officials described the following steps in the automated acquisition process:

1. The Acquisition Center automatically generates offer packages from TAAMS and mails them out to eligible landowners. The offer package includes the deed, “Inventory Summary” (bubble sheet to note interests to sell), and “Inventory Detail” (legal land descriptions).
2. Willing sellers return their completed offer packages to a central mailing center, where a third-party contractor scans the packages into TAAMS.
3. All offer packages undergo quality assurance review by at least two different Acquisition Center employees and approving official before being approved.
4. Upon approval, two documents are autogenerated (“Approval of Conveyance” and “Conveyed Interest Report”) and recorded along with the scanned deed.
5. The title is transferred from the seller to the tribe, and the title documents are certified.¹
6. Payment automatically posts to the seller’s account.
7. An “Acknowledgement Letter” is autogenerated and mailed to the seller.

After issuance of the new policy, the Acquisition Center began using the automated acquisition process to acquire land interests and transfer them to tribes. According to the Division of Land Titles and Records, it assumed the certification function was part of the automation, but the module was not properly programmed, and the certification function became the responsibility of the Land Titles and Records Offices. Based on our discussions with a division official and a title office official, we became aware that the title offices had not been trained on the automated acquisition process and were unaware that title documents were automatically being added to a “reminder queue” for review and certification by the title offices. The division learned of this issue when a significant number of uncertified land title documents began showing up on the title office’s performance reports. A former title office manager told us that Acquisition Center activity generated a backlog of an estimated 100,000 uncertified land title documents at the Bureau’s Great Plains Region before the title office learned about the TAAMS reminder queue. The Great Plains Region title office scaled up staffing from two evaluators to six and approved additional overtime for approximately 1 year as the evaluators certified the land title documents to reduce the backlog.

¹ The definition of “land title certification” used in this report and in the Bureau’s policies applies when the entry of a recorded acquisition is complete and land title ownership has been updated in TAAMS. Two other forms of certification are defined in 25 C.F.R. § 150. The first form of certification occurs when a copy of a document is true and correct. The second form of certification is title examination for issuance of a certified Title Status Report. The certifications described in 25 C.F.R. § 150 are performed by Land Titles and Records Offices and are not at issue with regard to the Land Buy-Back Program.

2014 – 2017: The Bureau Updates Delegation of Land Title Authority and Obtains Advice From the Office of the Solicitor

October 2014 emails show the Division of Land Titles and Records had concerns about the automated acquisition process, leading it to request that the Office of the Solicitor review specifically the delegated authority to record and define what land title certification meant in the context of the Land Buy-Back Program, as the term “certification” is used in Bureau policy and regulations for multiple activities. An Office of the Solicitor official informally responded to the division that the current delegations were legally sufficient but recommended they be rewritten to provide clear, unambiguous language.

In 2015, the Bureau updated its delegations of authority policy (3 *IAM* 6), stating the authority to record and certify land title will be delegated to only the Land Titles and Records Offices. This conflicted with the 2013 policy that stated that the title would automatically be recorded in TAAMS once the Acquisition Center accepted and approved it. Because the 2015 policy did not replace the 2013 policy, two Bureau offices were designated in policy as having authority to record title documents, which created confusion. An Acquisition Center official expressed frustration that center officials were not given the opportunity to comment on the 2015 policy update before it was issued.

In February 2016, the Bureau issued a policy (77 *IAM* 2) to clarify the meaning and significance of “without further consideration or action” in the 2013 policy by explicitly adding recordation and certification to the Acquisition Center’s delegated authority to accept and approve title documents transferring fractionated land interests in TAAMS. The 2016 policy did not replace the 2015 policy that restricted delegation of authority to record and certify land title to only the Land Titles and Records Offices, which added to the confusion about the authority to record and certify title documents.

The day before the Bureau’s policy 77 *IAM* 2 was issued, the Bureau Director was briefed on concerns about the automated acquisition process, the conflict between 77 *IAM* 2 and existing policies, and the need for effective internal controls. The Division of Land Titles and Records took the position that land title acceptance, approval, recording, and certification were clearly distinct functions in the Bureau and in the TAAMS system for good internal control. As such, the division suggested that, while the Acquisition Center was authorized by previous policies to perform acceptance, approval, and recording functions, certification should remain with the Land Titles and Records Offices. The policy delegating certification to the Acquisition Center was issued despite the concerns raised by the division.

In October 2017, an Office of the Solicitor attorney-advisor issued a memorandum opining that the Acquisition Center was not authorized to perform certification based on the existing delegation of land title authority to the Land Titles and Records Offices through 25 C.F.R. § 150. The memorandum stated, “asserting authority that is delegated by regulation to another entity and adopting policies accordingly may be contrary to the regulation (and therefore possibly illegal)” and added such an assertion should, at a minimum, be a product of informal rulemaking procedures.

Bureau officials disagreed with the Office of the Solicitor's memorandum, and an Acquisition Center official told us that these officials did not consider this legal memorandum as an official Solicitor opinion because an attorney-advisor signed it rather than the Solicitor or an Associate Solicitor.

2016 – 2017: The Land Titles and Records Offices Raise Concerns to the Division of Land Titles and Records About Land Title Document Defects and Scanning Errors

In early 2016, the Colville Tribe's Land Titles and Records Office sent a memorandum to the Division of Land Titles and Records and the Acquisition Center to express concerns that the automated acquisition process was developed without the consideration of title office operating requirements. The Tribe's title office forwarded examples of errors and how they were corrupting ownership data and increasing office workload. In 2016 and 2017, the Osage Tribe also reported errors with Land Buy-Back Program land title documents, such as those with missing legal land descriptions or those in which the seller and landowner names did not match.

In April 2017, the Division of Land Titles and Records prepared a briefing document for the Bureau Director that described serious issues the Land Titles and Records Offices had identified starting in January 2017 involving an estimated 78,000 land title acquisitions initiated by the Acquisition Center. The primary issue cited in the briefing document was the incomplete scanning and entry of entire offer packages by the third-party contractor. It stated there was no way to validate that offer packages were complete because the original offer packages were received by the contractor, who then determined which pages to scan into TAAMS.

In June 2017, to address concerns raised by the Colville Tribe's title office and some Bureau title offices, the Division of Land Titles and Records worked with title office managers to develop and issue a document review checklist based on their interpretation of existing policies and guidance. The checklist instructed the title offices to follow the certification process in place for all non-Land-Buy-Back Program land title documents, which includes reviewing specific title document requirements and flagging identified defects in TAAMS. Title office policy provides guidance on defects; categorizes them as substantive, critical, or fatal; and specifies the required corrective action for each category of defect. The policy states that missing required title documents are fatal defects that must be corrected before the land title can be recorded. According to the title offices, for an acquisition to be valid, TAAMS must contain the complete offer package and the documents generated upon the offer package's acceptance:

- Deed
- "Inventory Summary"
- "Inventory Detail"
- "Approval of Conveyance"
- "Conveyed Interest Report"

- “Acknowledgement Letter”

One of the documents the Land Titles and Records Offices regularly reported missing was the “Inventory Detail.” While the offer packages sent to landowners instructed them to return the entire offer package, in many cases it was common for sellers to not return the “Inventory Detail” because no signatures were required on that document. Office of the Solicitor and Division of Land Titles and Records officials told us that the third-party contractor had destroyed original offer packages, and an Acquisition Center official explained the contractor had destroyed some “Inventory Detail” documents because they were viewed as duplicative. An Acquisition Center official told us once officials became aware of the document destruction, they directed the contractor to archive all documents per Federal document retention guidelines.

The Land Buy-Back Program guidance for sellers, available on the program website, states that all required documents, including the “Inventory Detail,” must be returned. It explains that if any documents are missing and there is insufficient time to provide new documents, the acquisition will be declined. The Acquisition Center’s standard operating procedures similarly state that if pages are missing, the acquisition is automatically marked incomplete and not processed. The Acquisition Center did not follow this guidance, however, as many acquisitions were accepted and recorded despite missing the “Inventory Detail.”

Of the 10 Bureau regions that participate in the Land Buy-Back Program, the Land Titles and Records Offices in 5 of the regions implemented the Division of Land Titles and Records checklist and flagged 8,644 defects in program title documents. The reasons given for flagging documents included missing documents, seller names not matching signatures, and incorrect document dates. Figure 2 summarizes the number of defects flagged by region and tribe.

Figure 2: Flagged Land Title Document Defects

Bureau Region or Tribe	Number of Flagged Defects
Colville Tribe	132
Midwest	10
Northwest	2,994
Pacific	1,774
Southern Plains	3,708
Southwest	26
Total	8,644

Source: Data provided by the Acquisition Center.

The Rocky Mountain and Great Plains Regions, where the Acquisition Center is located, are not represented in the flagged defects data. According to a Bureau official, this occurred because the Rocky Mountain Region had a standard practice of refusing to accept incomplete offer packages and instead sent them back to be corrected. The official stated that the region did not want to

publicize program errors or defects. The Department recently directed a review of Land Buy-Back Program acquisitions, which we describe in more detail later in this report. We obtained the results of the document review and learned that the review team identified instances at Rocky Mountain and Great Plains Regions in which acquisitions were completed despite a missing “Inventory Detail” document, leading us to conclude that these regions did not always send incomplete offer packages back to be corrected.

In November 2017, an Office of the Solicitor attorney-advisor issued a memorandum to the Land Buy-Back Program regarding the documents required for a valid title transfer. The opinion listed the same documents described above by the Land Titles and Records Offices as being required, including the “Inventory Detail,” and stated all of these documents must be recorded to ensure the validity of notice, certification, and chain of title. It further stated, “incomplete conveyance documents previously processed by the AC [Acquisition Center] not meeting this standard are defective pursuant to the current LTRO [Land Titles and Records Office] standards and must be corrected and rerecorded to come into compliance.”

Office of the Solicitor officials reported to us that the Bureau failed to accept or act on the legal guidance they provided. When we discussed this and other Solicitor opinions with Acquisition Center and program officials, they stated that the Office of the Solicitor issued legal opinions they did not request, and, as mentioned earlier in this report, an Acquisition Center official told us they did not consider these legal memoranda as official Solicitor opinions because an attorney-advisor signed them rather than the Solicitor. These disagreements illustrate why issues regarding delegation of authority and the validity of land title went unresolved from 2014 to 2020.

In May 2018, the Bureau Director issued a memorandum to the regional directors that rescinded the Division of Land Titles and Records document review checklist and directed the Land Titles and Records Offices to remove flags identifying defects based solely on the acquisition being completed by the automated acquisition process. It also directed the Acquisition Center to complete the certifications pending in TAAMS and stated the previously approved automated certification function would soon be available in TAAMS. Once Acquisition Center officials were given access to the certification queue in TAAMS and the certification process was automated, the title offices stopped certifying the Land Buy-Back Program documents processed by the Acquisition Center.

The events surrounding the checklist and TAAMS modifications to automate certification further illustrate a breakdown in communication and coordination. A Bureau official stated that program officials and the title offices were not copied on the Director’s memorandum, and the Division of Land Titles and Records Chief confirmed the division was never directly provided the memorandum. An Office of the Solicitor official stated that the office was not consulted on the memorandum or the changes to TAAMS procedures.

2018 – 2019: The Acquisition Center and Office of the Solicitor Disagree Over Legality of Delegated Land Title Authorities

In November 2018, the Associate Solicitor for the Office of the Solicitor’s Division of Indian Affairs issued an opinion stating that the 2013 and 2016 Bureau policies delegating title

authorities to the Acquisition Center are in direct conflict with 25 C.F.R. § 150, which gives land title authority to the Land Titles and Records Offices. It also pointed out that the 2013 and 2016 delegations conflicted with the 2015 update to the Bureau's delegations of authority policy. The Bureau had previously sought to update the 2015 policy to remove the limitation on delegation of land title authority, but the Office of the Solicitor opined that such an update would "not fix the indisputable authority delegated to the LTROs [Land Titles and Records Offices] by 25 C.F.R. § 150," which has the force of law, and the *Departmental Manual* and *IAM* may not adopt policy that conflicts with law or regulations.

The Office of the Solicitor opinion states that segregation of duties is at the foundation of risk management and sound internal controls. The opinion also points out that the dual functionality of the Acquisition Center, performing both Division of Real Estate Services and Land Titles and Records Offices responsibilities, is in direct conflict with the *Government Accounting Office's Standards for Internal Control in the Federal Government* (Green Book). This is the same concern we reported in our 2011 evaluation report when the Bureau began automating the land acquisition process in preparation for implementation of the Land Buy-Back Program.

According to Office of the Solicitor, the improper delegation of land title authority could result in claims that the Department breached its fiduciary trust responsibilities by mismanaging settlement funds, potentially placing all Acquisition Center actions at risk of being invalidated. The Office of the Solicitor opinion includes two options for resolving the delegation of authority issues: update the regulations in 25 C.F.R. § 150 to designate both the title office and the Acquisition Center as offices authorized to record and certify title or split the Acquisition Center into two departments, one for Division of Real Estate functions and the other for title office functions.

The Bureau Director and Land Buy-Back Program Director who were to receive courtesy copies of the November 2018 Office of the Solicitor opinion expressed frustration to us that they did not receive the opinion when it was issued. Even though the November 2018 opinion states that it was prepared at the request of the Acquisition Center, these program officials also expressed frustration that they were receiving unsolicited opinions and memoranda, leading them to consider canceling the funding agreement the program had with the Office of the Solicitor to provide legal guidance. These comments further illustrate the breakdown of communication and coordination between the Bureau officials, Land Buy-Back Program officials, and the Office of the Solicitor.

Acquisition Center officials contend that 25 C.F.R. § 150 is not the outright authority, is outdated, and, given the unprecedented task of land consolidation, does not reflect the "modernized and automated environment" of today. They cite other criteria, specifically the Indian Land Consolidation Act and Secretarial Order No. 3325, as allowing the Acquisition Center to record and certify acquisitions. The Indian Land Consolidation Act requires the Secretary to minimize administrative costs associated with land acquisition programs, such as the Land Buy-Back Program, notwithstanding the existence of otherwise applicable policy, procedure, or regulations, through the elimination of duplicate title documents, administrative proceedings, and transactions. According to Acquisition Center officials, "the regulations and policies applicable to the LTRO [Land Titles and Records Office] appear to be precisely the sort

of otherwise applicable regulations that Congress directed the Secretary to work around in order to minimize administrative costs.” Acquisition Center officials stated that Secretarial Order No. 3325, which created the Land Buy-Back Program, supports the requirements of the Indian Land Consolidation Act by establishing a goal for the program to manage administrative expenses in the most cost-efficient manner possible, in a way that facilitates effective, long-term trust management and system integration. An Office of the Solicitor memorandum states that the Bureau’s argument is irrelevant because 25 C.F.R. § 150.3 delegates the recording function exclusively to the title offices, and an amendment to the *IAM* cannot override that delegation.

In May 2019, the Indian Affairs Office of Regulatory Affairs and Collaborative Action and the Office of the Solicitor proposed updates to the conflicting Bureau policies to resolve the delegation of authority issue and provided the proposed policy revisions to the Bureau for review. An Office of the Solicitor official told us the Bureau disagreed with the policy changes, but, in August 2019, the Bureau Director said he was unaware of any proposed policy revisions and told us he was willing to implement recommendations the Office of the Solicitor provided to him.

In October 2019, Office of the Solicitor officials, Acquisition Center officials, and Land Buy-Back Program officials met to discuss policy changes addressing the delegation of authority issue, and a program official told us they believed all parties had a common understanding for moving forward. A few weeks later, the Acquisition Center prepared a set of policy revisions that generally left the authorities delegated to the Acquisition Center unchanged. An Office of the Solicitor official told us the Acquisition Center revisions do not solve the delegation of authority issues and, after meeting with the Assistant Secretary – Indian Affairs, agreed to submit a legally defensible set of policy changes directly to the Bureau Director.

The Bureau issued two revised policies on February 24, 2020, and May 22, 2020—3 *IAM* 11 and 77 *IAM* 1, respectively—to clarify the land title authorities delegated to the Acquisition Center and address the conflicts identified by the Office of the Solicitor in 2017 and 2018. An Office of the Solicitor official represented to us that the policy changes resolved the delegation issue and that no further policy changes were needed.

2019 – 2020: The Department Directs Review of Land Buy-Back Program Land Title Documents

Complaints about land title document defects and errors reached the Associate Deputy Secretary, and, in mid-2019, he directed a team composed of Bureau and Office of the Special Trustee for American Indians personnel to determine whether the defects and errors were systemic.

In September 2019, a memorandum issued by the quality review team stated 169 of the 400 Land Buy-Back Program acquisitions reviewed (42 percent) did not have the “Inventory Detail” document returned. As stated previously in this report, Office of the Solicitor and Land Titles and Records Office officials explained to us that the entire offer package must be returned and correctly executed for the land sale to be valid. The review team also found that 60 of the 400 program acquisitions (15 percent) had seller signatures that did not exactly match the seller names listed on the deed.

The Office of the Solicitor prepared a memorandum to address the significance and legal implications of the issues identified by the document review project. It reiterated the Department's responsibility to manage tribal trust property and determined that if either the "Inventory Summary" or "Inventory Detail" are missing from the acquisition documents, the deeds would be considered legally defective. It also opined that the Department could face breach of trust claims for failure to maintain accurate records.

In late February 2020, the Office of the Solicitor presented four options, along with their limitations, for correcting title document issues to satisfy the Department's trust responsibility and reduce the risk of litigation against the Department. The options ranged from unrecording and rerecording the deeds with the "Inventory Detail" as a single document, to not taking any corrective action at all. On June 3, 2020, to remedy any potential ambiguities in the legal descriptions of Land Buy-Back Program deeds, the Assistant Secretary – Indian Affairs approved the option whereby both the "Inventory Summary" and "Inventory Detail" must be separately recorded with the appropriate recording seal. The Department previously reserved \$25 million from the Trust Land Consolidation Fund for potential corrective actions.

Recommendations
<p>We recommend that Department leadership:</p> <ol style="list-style-type: none">1. Resolve longstanding conflicts between the offices involved regarding land title authority and document the decision made2. Direct Bureau leadership to update its policies to implement the final land title authority decision3. Determine and implement the appropriate actions to correct identified land title document errors

Conclusion and Recommendations

Conclusion

We agree with the Office of the Solicitor that the Bureau's argument that the Acquisition Center has authority to record and certify land title documents based on the Indian Land Consolidation Act and Secretarial Order No. 3325 is not legally supportable because 25 C.F.R. § 150.3 delegates the recording function exclusively to the Land Titles and Records Offices, and an amendment to the *IAM* cannot override that delegation. Our interpretation of the Act permits the Bureau to set aside 25 C.F.R. § 150 only if it minimizes administrative costs through the elimination of duplicate title documents, administrative proceedings, and transactions. Title recordation and certification do not constitute duplicate title documents, administrative proceedings, or transactions.

Officials from multiple offices reported a breakdown of communication between the offices involved in the Land Buy-Back Program due to longstanding conflict over land title authority. This conflict led to confusion about roles and responsibilities, title document errors, breakdown in communication between offices, and the potential for litigation. To clarify land title authority delegations and address the conflicts, the Bureau issued two revised policies on February 24, 2020, and May 22, 2020—3 *IAM* 11 and 77 *IAM* 1, respectively. According to the Office of the Solicitor, the policy changes resolved the issues.

We make three recommendations that, if implemented, will help the Department's leadership ensure that the program's land acquisitions are legally defensible and minimize the Department's potential liability.

Recommendations Summary

The Department responded to our draft report on September 10, 2020, concurring with our recommendations and included the BIA's updated policies that address Recommendations 1 and 2 (see Appendix 2 for the Department's response). Based on the response, we consider Recommendations 1 and 2 resolved and implemented and Recommendation 3 resolved but not implemented. Throughout the course of our evaluation, we communicated our findings to the Department, and the Department took actions to implement two of our recommendations before issuance of our draft report. We will refer Recommendation 3 to the Assistant Secretary for Policy, Management and Budget (PMB) to track implementation (see Appendix 3 for the status of recommendations).

We recommend that Department leadership:

1. Resolve longstanding conflicts between the offices involved regarding land title authority and document the decision made

Department response: The Department concurred with our recommendation and worked with the Office of the Assistant Secretary – Indian Affairs, Bureau of Indian

Affairs, and the Office of the Solicitor to revise the *IAM* to clarify delegations to the Acquisition Center. The Department also stated that it is “developing revisions” to the relevant regulations, which have not been updated since 1981.

OIG reply: Based on its response to Recommendation 2 and confirmation from the Office of the Solicitor, which stated that the policy changes resolved the conflict, we consider this recommendation resolved and implemented.

2. Direct Bureau leadership to update its policies to implement the final land title authority decision

Department response: The Department concurred with our recommendation and stated that the Bureau revised and implemented two *IAM* chapters. These chapters clarify the land title authority delegation to the Acquisition Center and resolve the delegation issues the Office of the Solicitor identified in 2017 and 2018.

OIG reply: An Office of the Solicitor official told us that the policy changes resolved the land title authority delegation conflict. Based on the Department’s response and our conversation with the Office of the Solicitor, we consider this recommendation resolved and implemented.

3. Determine and implement the appropriate actions to correct identified land title document errors

Department response: The Department concurred with our recommendation and stated that it worked with the Office of the Solicitor to address potential defects in the title records identified through the Department’s Land Buy-Back Quality Control Review Project. On May 28, 2020, the Office of the Solicitor presented various options for addressing potential defects to the Assistant Secretary – Indian Affairs. On June 3, 2020, the Assistant Secretary determined the Bureau would separately record the “Inventory Summary” and “Inventory Detail” with the appropriate recording seal. The Bureau stated that it is working to implement the Assistant Secretary’s decision.

OIG reply: Based on the Department’s response and the Assistant Secretary’s decision, we consider this recommendation resolved but not implemented and will refer it to the PMB for implementation tracking.

Appendix 1: Scope and Methodology

Scope

Our objective was to determine whether the Bureau of Indian Affairs' delegation of land title authority to its Acquisition Center was executed in accordance with Federal regulations.

Methodology

We conducted our evaluation in accordance with the *Quality Standards for Inspection and Evaluation* as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

To accomplish the evaluation's objective, we:

- Gathered background information on the Land Buy-Back Program for Tribal Nations and the Bureau's Acquisition Center through prior reports
- Reviewed followup correspondence from the U.S. Department of the Interior regarding Recommendation 5 from our January 4, 2011 report titled *Coordination of Efforts to Address Indian Land Fractionation* (Report No. WR-EV-BIA-0002-2010), in which we recommended that the Bureau review its policy to automatically apply titles to ensure that quality controls would not be compromised.
- Identified and reviewed Federal laws and regulations and Department, and Bureau policies related to the program
- Reviewed numerous documents and correspondence obtained from our hotline and from Bureau and program officials
- Reviewed legal opinions from the Office of the Solicitor related to the program and received legal opinions from our Office of General Counsel
- Interviewed the Associate Deputy Secretary, Bureau Director, and officials from the Bureau's Acquisition Center, the Land Titles and Records Offices, the Land Buy-Back Program, the Office of Regulatory Affairs and Collaborative Action, and the Office of the Solicitor
- Reviewed the results of the quality review project directed by the Department in 2019

We accepted the Trust Asset and Accounting Management System data that the Acquisition Center provided and did not test underlying information system controls.

Appendix 2: Department Response to Draft Report

The U.S. Department of the Interior's response follows on page 19. Due to the assertion of a legal privilege, we excluded an Office of the Solicitor legal opinion that was part of the Department's response.



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

SEP 10 2020

Mr. Mark Greenblatt
Inspector General
Department of the Interior
Washington, DC 20240

Dear Mr. Greenblatt:

Thank you for the opportunity to respond to the Draft Evaluation Report entitled, "The Bureau of Indian Affairs Jeopardized Land Buy-Back Program Accomplishments by Delegating Land Title Authority" (Report). The recommendations contained in the Report are appreciated and important. As detailed below and in the enclosures to this response, the Department of the Interior (Department) has taken concrete steps to implement each of the recommendations. As noted below, many of these were implemented prior to the issuance of the Report.

Recommendation 1: Resolve longstanding conflicts between the offices involved regarding land title authority and document the decision made.

These conflicts are resolved. Representatives from the Office of the Assistant Secretary – Indian Affairs (AS-IA), Bureau of Indian Affairs (BIA), and Office of the Solicitor worked to develop revisions to the Indian Affairs Manual (IAM) which clarify the delegations to the Acquisition Center and resolve the delegations issues identified by the Office of the Solicitor in 2017 and 2018, which are highlighted in the Report.

Although not directly at issue in the Report, this group is also tasked with developing revisions to the Land Title and Records regulations at Part 150 which have not been updated since 1981. The draft regulations are intended to reflect the changes that have occurred in the last 39 years, recognizing the broader use of technology while creating additional flexibility for the BIA going forward. For your reference, the draft regulations have been assigned RIN 1076-AF56.

Recommendation 2: Direct BIA leadership to update its policies to implement the final land title authority decision.

The BIA approved and implemented the revised IAM chapters. As noted in the Report, the revised 3 IAM 11 was approved on February 24, 2020 (enclosed). Although not noted in the Report, the revised 77 IAM 1 (enclosed) was approved on May 22, 2020. These chapters clarify the delegations to the Acquisition Center and resolve the delegations issues identified by the Office of the Solicitor in 2017 and 2018, which are highlighted in the Report.

Recommendation 3: Determine and implement the appropriate actions to correct identified land title document errors.

The Department, on its own initiative, undertook a review of title records associated with the Land Buy Back Program (LBBP). The Land Buy Back Quality Control Review Project issued its findings on November 29, 2019. The Office of the Solicitor performed a legal analysis of those findings. That analysis and menu of options for resolving any potential defects in the title records were documented in a memorandum to AS-IA dated May 28, 2020 (enclosed). On June 3, 2020, the Assistant Secretary selected "Option 2" from the options presented in the May 28, 2020, decision briefing (enclosed). The BIA is working to implement the Assistant Secretary's decision.

Conclusion

The Report concludes, "We make three recommendations that, if implemented, will help the Department's leadership ensure that the [Land Buy Back] program's land acquisitions are legally defensible and minimize the Department's liability." As detailed above and in the enclosed documents, the Department has implemented each of the recommendations. With the exception of the ongoing work by BIA on the LBBP title records, each recommendation was implemented before the July 14 issuance of the Report.

The underlying Report does not acknowledge that many of the recommendations/issues identified had been resolved prior to the final draft being submitted. We feel it is important for the many Indians and Tribes who participated in the program to have the benefit of knowing that the BIA is actively engaged in ensuring that these electronic records are accurately uploaded and recorded, and that identified programmatic issues have already been resolved—in some cases for months. We appreciate your consideration of addressing these issues in your final report.

Sincerely,

A handwritten signature in dark ink, reading "Katharine Sinclair MacGregor". The signature is fluid and cursive, with the first name "Katharine" being the most prominent.

Katharine Sinclair MacGregor

Enclosures

Appendix 3: Status of Recommendations

Recommendation	Status	Action Required
Recommendation 1	Resolved and implemented	No action is required.
Recommendation 2	Resolved and implemented	No action is required.
Recommendation 3	Resolved but not implemented	Refer recommendation to the Assistant Secretary for Policy, Management and Budget to track implementation.

Report Fraud, Waste, and Mismanagement



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